

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207045

DATE: February 14, 1983

MATTER OF: Asset Incorporated

DIGEST:

1. Award of negotiated cost-reimbursement contract to higher technically rated, higher cost offeror is proper where that result is consistent with evaluation criteria stated in solicitation and where procuring agency makes reasonable determination that difference in technical merit is sufficiently significant to justify cost difference.
2. Protest concerning evaluation of option is untimely because it was apparently filed more than 10 working days after protester knew of basis for protest. In any event, GAO finds that protester was not prejudiced by evaluation of option prices.
3. No evaluation preference may be given for small business subcontracting since it was not stated in evaluation criterion.
4. Protest that certain certifications were not obtained from, nor made by, awardee prior to award and that contract awarded did not contain termination for convenience of Government clause is denied, since agency provided evidence rebutting those allegations.

Asset Incorporated (Asset) protests the award of a level-of-effort, cost-plus-fixed-fee contract to Advanced Technology, Inc. (Adtech), for engineering, technical and management services in support of the "LVT7A1 Family of Assault Amphibians Program," under request for proposals (RFP) No. N00024-82-R-2019(Q), issued by the Naval Sea Systems Command (Navy).

Asset alleges that the contract was improperly awarded to an offeror whose proposal was technically equal to, but higher in cost than, its proposal. Asset also contends that the option years were improperly evaluated, that no

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preference was given Asset for its proposed small business subcontracting, that certain certifications were not made by, nor obtained from, Adtech until after award, and that the contract does not contain a termination for convenience of the Government clause.

We dismiss the protest in part and deny it in part.

Section "M" of the solicitation set forth the following evaluation factors and the basis for award of the contract:

"1. Evaluation Factors

The following factors and sub-factors will be evaluated to determine the offeror's score. The factors and subfactors are arranged in descending order of importance. Factor A is of significantly greater importance than Factors B, C, D or E.

- A. Proposed Approach (Factor)
(Tasks 1 and 2)
- A.i. Technical Understanding and Capability
- A.ii. Organization
- A.iii. Management Control System
- A.iv. Personnel

- B. Proposed Approach (Tasks 3 and 4)
(Factor)
- B.i. Technical Understanding and Capability
- B.ii. Personnel
- B.iii. Organization
- B.iv. Management Control System

- C. Corporate Experience (Factor)

- D. Facilities (Factor)

- E. Cost (Factor)
- E.i. Cost Realism
- E.ii. Total Cost
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"2. Basis for Award

"An award will be made to that responsible offeror whose proposal is considered (a) most likely to satisfy the requirements of the government and (b) most advantageous to the government, price and

other factors considered. Although total estimated cost to the government will be considered, technical capability is of paramount importance and the government may award any resulting contract to other than the lowest offeror."

Nine proposals were received in response to the RFP and were evaluated by the Technical Evaluation Review Panel (TERP), consisting of a four-member technical group and a two-member cost group. The TERP evaluated and scored the initial technical and cost proposals. The TERP results were then reviewed by the Contract Award Review Panel (CARP), which applied preestablished weights to the TERP's raw scores to arrive at an overall score including cost. Based on those results, the CARP included only Asset and Adtech in the competitive range. Written discussions were held with both of those offerors, and best and final offers were requested and received from both. The same evaluation procedures were applied to the best and final offers as were performed on the initial offers. The result was that Adtech's weighted overall score (including cost) was approximately 11 percent higher than Asset's, even though Asset's proposed cost (\$3,944,491) was about 20 percent lower than Adtech's (\$4,905,169). The CARP recommended award to Adtech. The contracting officer then determined that Adtech's technical merit justified the higher cost associated with that proposal. Thereafter, the Navy judged that "overall Adtech's proposal was most advantageous" and awarded to Adtech.

Asset essentially argues that the two proposals are virtually equal technically, notwithstanding Adtech's higher point score, and, therefore, award must be made to Asset at its lower cost. Asset bases its argument on two grounds. First, Asset points to the Navy letter notifying Asset of its inclusion in the competitive range which, in part, states that:

"A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirement. There are no deficiencies noted in your proposal."

According to Asset, this indicates that Asset's proposal was totally acceptable technically. Asset also points to the narrative ratings in the TERP's initial evaluation report, claiming that the narrative for both firms is so positive that the technical difference represented by the scores must be insignificant.

In a negotiated procurement, agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. The judgment of the procuring agency concerning the significance of differences in the technical merit of offerors is accorded great weight. Riggins & Williamson Machine Company, Incorporated et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168; 52 Comp. Gen. 358 (1972). We have consistently upheld award to offerors with higher technical scores and higher costs, so long as that result is consistent with the evaluation criteria, and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Columbia Research Corporation B-202762, January 5, 1982, 82-1 CPD 8; Hager, Sharp, & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365; Riggins & Williamson Machine Company, Incorporated, et al., supra.

In this case, award to the higher cost, higher technically rated offeror is clearly consistent with the evaluation criteria stated in the RFP. Cost was the least important of all evaluation factors, and the basis for award clause specifically stated that technical capability was of paramount importance. Also, the contracting agency determined that the difference in the two technical proposals represented by the point scores (11 percent) and the TERP narrative was sufficiently significant to overcome the cost difference between the proposals.

We have examined the point scores, the TERP narratives, and the proposals and we conclude that the agency determination that the technical difference was sufficiently significant to justify Adtech's higher cost was rationally based. While the point scores were only 11 percent apart, we have upheld agency determination of significant technical differences with percentage differences of less than that amount. See e.g., Columbia Research Corporation, supra (7-percent difference). Also, while the TERP narratives for both offerors were positive and while each offeror was rated outstanding overall in technical approach, the narrative concerning Adtech's proposal was consistently better and was consistent with the point scores. Asset's argument that its proposal had no deficiencies is not persuasive. That only means that it was at least technically acceptable as submitted, but does not establish any level of technical merit above that. The evaluation and award criteria made it

clear that award would be made to the technically superior offeror, not to the technically acceptable offeror with the lowest cost.

Asset's complaint concerning the option is that the inclusion of the option quantity in the evaluation for award purposes improperly negates the requirements of Defense Acquisition Regulation (DAR) § 1-1505(c) (DAC No. 76-6, January 31, 1977) that options not be exercised unless funds are available and a formal or informal market survey shows that the option is the most advantageous method of fulfilling the Government's needs. Asset contends that by including the option cost in the cost evaluation, the Navy has prejudged the advantage of exercising the option.


We find this portion of Asset's protest to be untimely filed, as the Navy argues. This basis for protest was apparently known to Asset, at the latest, on April 5, 1982, as evidenced by the Asset date stamp on the Navy letter notifying Asset of award to Adtech. That letter conveyed the total contract price, which Asset apparently recognized as also containing the option price, even though the Navy did not exercise the option at award; thus, Asset knew from the letter that option prices had been evaluated for award. While Asset's initial protest was filed on April 6, 1982, it did not mention this issue. The issue was not raised until April 29, 1982. Our Bid Protest Procedures require that protests be filed within 10 working days of knowledge of the basis for protest, and this issue was not filed within that time. See 4 C.F.R. § 21.2(b)(2) (1982). Also, each new protest issue must independently satisfy the timeliness standards because our procedure does not contemplate piecemeal presentation or development of protest issues. Tombs & Sons, Inc., B-206810.4, August 2, 1982, 82-2 CPD 100.

In any event, the requirements of DAR § 1-1505(c) must be complied with whether or not options are evaluated for award purposes, and the Navy stated that it intended to comply with those requirements if the option is exercised. We do take note, however, of the Navy's admission that the clause notifying offerors that the option would be evaluated was not included in the solicitation as required. The Navy rescored the proposals without the option being evaluated, and it made no difference in the result. We have reviewed that rescoring and find it in accordance with the evaluation plan and reasonable. Therefore, Asset was not prejudiced by the omission. However, the possibility of prejudice is present in such circumstances, and the Navy should take steps to ensure that the clause is not omitted in future solicitations.

Asset also contends that it received no preference for small business subcontracting. However, the solicitation does not provide for such a preference, so it would be improper to grant one.

Finally, Asset alleges that the Navy did not receive an Equal Employment Opportunity Clearance for Adtech or a certificate of cost and pricing data from Adtech prior to the award of the contract, as required. Asset also alleges that the contracting officer did not determine, prior to award, that a cost-reimbursement contract was necessary to secure the required services. Additionally, Asset claims that the contract does not contain a termination for the convenience of the Government clause. The Navy has provided us with evidence rebutting each of these claims, so they are denied.

We dismiss the protest in part and deny it in part.

for 
Comptroller General
of the United States